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## BEFORE THE ARIZONA CORPORATION COMMISSION

BOB STUMP  
Chairman

Arizona Corporation Commission

GARY PIERCE  
Commissioner

DOCKETED

BRENDA BURNS  
Commissioner

FEB - 6 2013

BOB BURNS  
Commissioner

DOCKETED BY

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SUSAN BITTER SMITH  
Commissioner

IN THE MATTER OF THE APPLICATION ) DOCKET NOS.  
 OF ZAYO GROUP, LLC, 360NETWORKS ) T-20783A-12-0463  
 (USA) INC., ABOVE NET ) T-03777A-12-0463  
 COMMUNICATIONS, INC. AND ONVOY, ) T-03774A-12-0463  
 INC. FOR AN ORDER AUTHORIZING ) T-20842A-12-0463  
 CERTAIN PRO FORMA INTRA- )  
 CORPORATE TRANSACTIONS )

DECISION NO. 73672ORDER

Open Meeting  
 January 30 and 31, 2012  
 Phoenix, Arizona

BY THE COMMISSION:

FINDINGS OF FACT

1. On November 14, 2012, Zayo Group, LLC ("Zayo"), 360networks (USA) inc. ("360networks"), AboveNet Communications, Inc. ("AboveNet") and Onvoy, Inc. ("Onvoy", and collectively the "Applicants") filed an Application requesting the Arizona Corporation Commission's ("Commission") approval to complete certain pro forma intra-company transactions with respect to Applicants' regulated businesses in Arizona, resulting in (1) the assets and customers of 360networks and AboveNet moving to Zayo, (the "Zayo Pro Forma Transactions") and (2) certain wholesale voice services and assets, currently owned by 360networks, moving to Onvoy ("Onvoy Pro Forma Transaction") pursuant to Arizona Revised Statutes ("A. R.S.") § 40-285.

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2. The Applicants also request that the Certificates of Convenience and Necessity ("CC&Ns"), tariffs, and performance bonds of AboveNet and 360networks be cancelled effective upon notification by the Applicants that the pro forma transactions have been completed. In addition, the Applicants request a waiver of Arizona Administrative Code ("A.A.C.") R14-2-1904 et seq., the Commission's slamming rules.

3. On November 30, 2012, the Applicants filed a Supplement to the Application indicating that the Onvoy Pro Forma Transaction will be accomplished either through a transfer directly from 360networks to Onvoy or a transfer from 360networks to Zayo as part of the Zayo Pro Forma Transactions with a later transfer from Zayo to Onvoy (following receipt of Onvoy's CC&N<sup>1</sup> from the Commission).

4. On December 12, 2012, the Applicants filed an Affidavit of Publication confirming publication of a legal notice in The Arizona Republic on December 5, 2012.

#### Background

5. Zayo is a Delaware limited liability Company with principal offices located at 400 Centennial Parkway, Suite 200, Louisville, Colorado 80027. 360networks is a Nevada corporation and AboveNet is a Delaware corporation. 360networks and AboveNet are wholly-owned indirect subsidiaries of Zayo Group, a wholly-owned direct subsidiary of Zayo Group Holdings, Inc. ("Holdings"). Holdings is a Delaware corporation wholly-owned by Communications Infrastructure Investments, LLC ("CII"), a Delaware limited liability company. Onvoy is a Minnesota corporation with a principal address of 10300 6th Avenue North, Plymouth, Minnesota 55441. Onvoy is a wholly-owned direct subsidiary of Holdings.

#### The Proposed Transaction

6. The Applicants state the proposed transactions are being undertaken to simplify the existing corporate structure that will result in customers and assets moving from AboveNet and 360networks to Zayo. In addition, certain wholesale assets and services currently held by 360networks will be moved to Onvoy, Zayo's affiliate. The Applicants state that the proposed

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<sup>1</sup> Onvoy's Application for a CC&N in Docket No. T-20842A-12-0116.

1 transactions will not result in any changes to services received by 360networks and AboveNet  
2 customers in Arizona, including rates, terms and conditions. The Applicants propose to transfer  
3 each of the affected customers pursuant to terms of that customer's service contract that permits  
4 transfers to affiliates and/or pursuant to the customer's authorization. Customers will receive  
5 written notice of the proposed changes. The Applicants propose to complete the transactions as  
6 soon as possible and no later than January 30, 2013.

7 Staff Analysis

8 7. Zayo was granted a CC&N to provide facilities-based local exchange services and  
9 resold and facilities-based intraLATA and interLATA private line services in Decision No. 72561,  
10 dated August 24, 2011. 360networks was granted a CC&N to provide facilities-based local  
11 exchange switched access services in Decision No. 69240, dated January 19, 2007, and a CC&N to  
12 provide facilities-based interexchange telecommunications services in Decision No. 62710, dated  
13 June 30, 2000.

14 8. AboveNet is authorized to provide facilities-based and resold non-switched private  
15 line and high capacity fiber optic telecommunications services pursuant to Decision No. 62628.  
16 Onvoy has a pending Application for a CC&N to provide resold local exchange, resold long  
17 distance, facilities-based local exchange and long distance telecommunications services in Docket  
18 No. T-20842A-12-0116<sup>2</sup>.

19 *The Affiliated Interests Rules*

20 9. The Public Utility Holding Companies and Affiliated Interests Rules apply to all  
21 Class A – investor-owned utilities (defined for telecommunications carriers that have Arizona  
22 jurisdictional annual revenues of more than \$1 million). Based on revenues reported in the 2011  
23 Annual Reports on file with the Commission, none of the Applicants generated more than \$1  
24 million of Arizona jurisdictional revenue. Therefore this Application is not subject to A.A.C. R14-  
25 2-801 through 805 of the Public Utility Holding Companies and Affiliated Interests Rules.

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<sup>2</sup> Procedural Order issued October 9, 2012 set a hearing date for January 3, 2013.

1 *Transfer of Customers and Assets*

2 10. The Applicants explained to Staff that 360networks currently provides sixteen (16)  
3 customers with private line services and AboveNet has zero (0) customers that will be transferred,  
4 along with their assets, to Zayo under the Zayo *Pro Forma* Transactions. The Applicants also  
5 explained to Staff that 360networks currently provides wholesale Voice over Internet Protocol  
6 ("VoIP") services to one (1) customer that will, along with those 360network assets, either be  
7 transferred directly to Onvoy under the Onvoy *Pro Forma* Transaction or transferred from  
8 360networks to Zayo as part of the Zayo *Pro Forma* Transactions with a later transfer from Zayo  
9 to Onvoy, following Onvoy's receipt of its CC&N from the Commission. The Applicants do not  
10 serve residential end-users.

11 11. The Applicants included a customer notice that will be sent to affected customers  
12 under the Zayo *Pro Forma* Transactions. The Applicants also provided a customer notice that will  
13 be sent to affected customers under the Onvoy *Pro Forma* Transaction. Each notice will be  
14 provided to customers in their bill issued at least thirty (30) days prior to the Zayo *Pro Forma*  
15 Transactions and Onvoy *Pro Forma* Transaction taking place. As stated in the Application and in  
16 the customer notices, there will not be any changes to the services received by those customers,  
17 including rates, terms and conditions of service. According to the Applicants, the transfer of  
18 customers and assets from 360networks and AboveNet to Zayo and Onvoy will be virtually  
19 transparent to customers and will not result in any change in their services.

20 *Request for Waiver of Slamming Rules*

21 12. The Applicants are requesting a waiver of A.A.C. R14-2-1904 et seq., the  
22 Commission's anti-slamming rules<sup>3</sup>. Staff has reviewed the customer notices that will be sent to  
23 those affected customers who will become Zayo customers and to those that will become Onvoy  
24 customers. Because the notice informs customers that the rates, terms and conditions of service  
25 will not change as a result of the proposed transactions and informs customers that they may  
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28 <sup>3</sup> See *In the Matter of the Application of Zayo Group, LLC, 360networks (USA) Inc., AboveNet Communications, Inc. and Onvoy, Inc. for an Order Authorizing Certain Pro Forma Intra-Corporate Transactions*, Docket Nos. T-20783A-12-0463 et al., Page 5, Footnote 3.

1 subscribe to the telecommunications service provider of their choice, Staff believes the  
2 Commission's slamming rules should be waived in this matter.

3 *Cancellation of CC&Ns*

4 13. The Applicants are requesting cancellation of the CC&Ns, tariffs, and performance  
5 bonds of 360networks and AboveNet effective upon notification from the Applicants to the  
6 Commission that the Pro Forma Transactions have been completed. Since 360networks and  
7 AboveNet will no longer be providing telecommunications services in the State of Arizona, the  
8 CC&Ns of 360networks and AboveNet will no longer be necessary. A.A.C. R14-2-1107(B)  
9 requires that "no later than twenty (20) days after the Application is filed, the telecommunications  
10 company shall publish legal notice of the Application in all counties affected by the Application."  
11 Notice pertaining to this Application was published in *The Arizona Republic* on December 5, 2012.  
12 The corresponding Affidavit of Publication was filed by the Applicants in Docket Control on  
13 December 12, 2012.

14 14. 360networks currently has a \$100,000 performance bond on file with the Commission  
15 as required in Decision No. 69240, dated January 19, 2007. AboveNet does not have a  
16 performance bond in place. Zayo currently has a \$100,000 performance bond on file with the  
17 Commission as required in Decision No. 72561, dated August 24, 2011. Staff's recommendation  
18 in Onvoy's CC&N Application proceeding is that Onvoy procure a performance bond or  
19 Irrevocable Sight Draft Letter of Credit ("ISDLC") in the amount of \$125,000.

20 *The Public Interest*

21 15. The Applicants indicate that the Zayo *Pro Forma* Transactions will simplify Zayo's  
22 existing corporate structure, reduce its reporting and accounting burdens and provide other  
23 operational efficiencies resulting in a stronger competitor to the benefit of consumers. The  
24 Applicants also indicate that the Onvoy *Pro Forma* Transaction will align certain wholesale assets  
25 and services with an entity that focuses on that business to the benefit of those customers.

26 16. The Applicants state that the proposed transactions will be virtually transparent to  
27 customers and will not result in any change to the rates, terms and conditions of their services. All  
28 of Zayo's subsidiaries, including the Applicants, have the same corporate officers and there will be

1 no change in the managerial qualifications of the telecommunications provider serving those  
2 customers affected by the Zayo *Pro Forma* Transactions. Likewise, the Applicants state that  
3 Onvoy's officers and key personnel have the managerial qualifications to provide  
4 telecommunications services to customers affected by the Onvoy *Pro Forma* Transaction.

5 17. The Corporations Division reports that on November 21, 2012, Zayo Group, LLC.  
6 and all Companies listed in this Application are in Good Standing. Staff's search of the Consumer  
7 Services database for all Companies listed in this Application from January 1, 2009 to current  
8 revealed that there are no complaints or opinions filed against these Companies.

9 18. A. R.S. § 40-285 requires public service corporations to obtain Commission  
10 authorization to assign or dispose of a utility's assets as proposed by this Application. The statute  
11 serves to protect captive customers from a utility's act to dispose of any of its assets that are  
12 necessary for the provision of service; thus, it serves to preempt any service impairment due to  
13 disposal of assets essential for providing service. Staff concludes that the proposed transactions  
14 will not impair the availability of service to customers since the Applicants provide competitive  
15 services that are available from alternative service providers.

16 Staff's Recommendations

17 19. Based on its analysis of the proposed transactions, Staff concludes that the transactions  
18 would not impair the financial status of Zayo or Onvoy, would not impair their ability to attract  
19 capital, and would not impair the ability of Zayo or Onvoy to provide safe, reasonable, and  
20 adequate service. Staff supports the Applicants' request for a waiver of A.A.C. R14-2-1904 et seq.

21 20. Staff recommends that the Commission grant approval of the proposed transactions of  
22 Zayo Group, LLC, 360networks (USA) inc., AboveNet Communications, Inc. and Onvoy, Inc. for  
23 (1) a transfer of assets and customers of 360networks and AboveNet to Zayo and, (2) the transfer  
24 of wholesale voice services and assets, currently owned by 360networks, either through a transfer  
25 directly from 360networks to Onvoy or a transfer from 360networks to Zayo with a later transfer  
26 from Zayo to Onvoy. However, the direct transfer to Onvoy cannot take place until the  
27 Commission grants Onvoy a CC&N.

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21. Staff also recommends, upon notification from the Applicants that the proposed transactions have been completed, that the CC&Ns, tariffs, and performance bonds of 360networks and AboveNet be cancelled. Upon cancellation of its CC&Ns, 360networks and AboveNet will no longer be authorized to provide telecommunications services in Arizona. Therefore, 360networks will no longer be subject to the requirements of Decision Nos. 69240 and 62710, and AboveNet will no longer be subject to the requirements of Decision No. 62628.

22. Staff further recommends that approval be conditioned on the following:

- a. That the Applicants provide notice to Docket Control within thirty (30) days following completion of the proposed transactions in this Application.
- b. That Zayo file conforming tariffs, within sixty (60) days of the effective date of a Decision in this matter, to incorporate the rates, terms and conditions of service that were included in the 360networks tariffs. That Onvoy file conforming tariffs, within sixty (60) days of the effective date of Onvoy being granted a CC&N in Docket No. T-20842A-12-0116, to incorporate the rates, terms and conditions of service that were included in the 360networks tariffs. Until such time, the 360networks tariffs shall be presumed to be the effective tariffs.
- c. That Zayo and Onvoy notify the 360networks customers of the proposed transfers through a direct mailing to the 360networks customers, allowing those customers to elect, within ninety (90) days of receiving the notice, to continue or discontinue service with Zayo or Onvoy, without prejudice or regard to contractual obligations. Verification of the notice should be filed with Docket Control within ninety (90) days of a decision in this matter.
- d. Onvoy will comply with the bond requirement of Docket No. T-20842A-12-0116.

#### CONCLUSIONS OF LAW

1. Zayo Group, LLC, 360networks (USA) inc., AboveNet Communications, Inc. and Onvoy, Inc. are public service corporations within the meaning of Article XV of the Arizona Constitution.

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2. The Commission has jurisdiction over Zayo Group, LLC, 360networks (USA) inc., AboveNet Communications, Inc. and Onvoy, Inc. and the subject matter in this filing.

3. The Commission, having reviewed the filing and Staff's Memorandum dated January 7, 2013, concludes that it is in the public interest to grant approval as proposed and discussed herein.

#### ORDER

IT IS THEREFORE ORDERED that the Application of Zayo Group, LLC, 360networks (USA) inc., AboveNet Communications, Inc. and Onvoy, Inc. seeking approval of the request for (1) a transfer of assets and customers of 360networks and AboveNet to Zayo and, (2) the transfer of wholesale voice services and assets, currently owned by 360networks, either through a transfer directly from 360networks to Onvoy or a transfer from 360networks to Zayo with a later transfer from Zayo to Onvoy pursuant to A.R.S. § 40-285 be and hereby is approved. The direct transfer to Onvoy shall not occur prior to Onvoy being granted a CC&N by the Commission.

IT IS FURTHER ORDERED that Zayo Group, LLC, 360networks (USA) inc., AboveNet Communications, Inc. and Onvoy, Inc. be authorized to engage in any transactions and to execute any documents necessary to effectuate the authorizations granted.

IT IS FURTHER ORDERED that the Application of Zayo Group, LLC, 360networks (USA) inc., AboveNet Communications, Inc. and Onvoy, Inc. to cancel the CC&Ns, tariffs, and performance bonds of 360networks, to provide local exchange switched access services and interexchange telecommunications services, and AboveNet, to provide facilities-based and resold non-switched private line and high capacity fiber optic telecommunications services shall be, and hereby is, granted, upon notification from the Applicants that the proposed transactions have been completed.

IT IS FURTHER ORDERED that upon cancellation of 360networks (USA) inc. Certificate of Convenience and Necessity, 360networks shall no longer be authorized to provide local exchange switched access services and interexchange telecommunications services in Arizona and therefore, shall no longer be subject to the requirements of Decision Nos. 69240 and 62710.

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1 IT IS FURTHER ORDERED that upon cancellation of AboveNet Communications, Inc.  
2 Certificate of Convenience and Necessity, AboveNet shall no longer be authorized to provide  
3 facilities-based and resold non-switched private line and high capacity fiber optic  
4 telecommunications services in Arizona and therefore, shall no longer be subject to the  
5 requirements of Decision No. 62628.

6 IT IS FURTHER ORDERED that within thirty (30) days following close of the proposed  
7 transaction, Zayo Group, LLC, 360networks (USA) inc., AboveNet Communications, Inc. and  
8 Onvoy, Inc. inform the Commission by filing an affidavit with Docket Control that transaction-  
9 related activities are completed.

10 IT IS FURTHER ORDERED that Zayo Group, LLC. file conforming tariffs, within sixty  
11 (60) days of the effective date of a Decision in this matter, to incorporate the rates, terms and  
12 conditions of service that were included in the 360networks tariffs.

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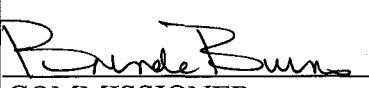
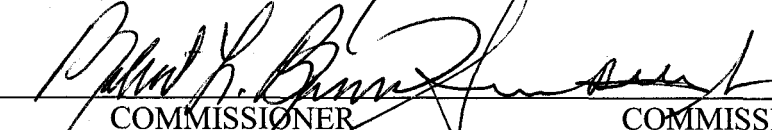

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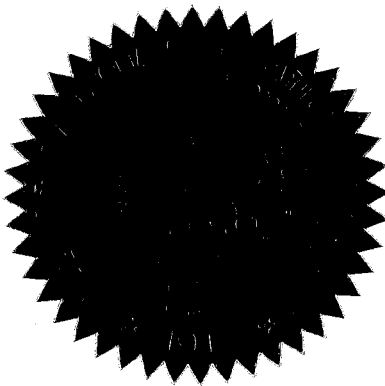
IT IS FURTHER ORDERED that Onvoy, Inc. file conforming tariffs, within sixty (60) days of the effective date of Onvoy, Inc. being granted a CC&N in Docket No. T-20842A-12-0116, to incorporate the rates, terms and conditions of service that were included in the 360networks tariffs.

IT IS FURTHER ORDERED that until such time as the new tariffs are filed, the 360networks tariffs shall be the effective tariffs for those affected by the proposed transfer.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

**BY THE ORDER OF THE ARIZONA CORPORATION COMMISSION**

 CHAIRMAN	 COMMISSIONER	
 COMMISSIONER	 COMMISSIONER	 COMMISSIONER



IN WITNESS WHEREOF, I, JODI JERICH, Executive Director of the Arizona Corporation Commission, have hereunto, set my hand and caused the official seal of this Commission to be affixed at the Capitol, in the City of Phoenix, this 6<sup>th</sup> day of February, 2013.

  
JODI JERICH  
Executive Director

DISSENT: \_\_\_\_\_

DISSENT: \_\_\_\_\_

SMO:PJG:sms/WVC

1 SERVICE LIST FOR: Zayo Group, LLC, 360networks (USA) inc., AboveNet Communications,  
2 Inc. and, Onvoy, Inc.

3 DOCKET NOS. T-20783A-12-0463, T-03777A-12-0463, T-03774A-12-0463, T-20842A-12-0463

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